

REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed September 19, 2008. At the time of the Office Action, Claims 14-31 were pending in this Application. Claims 14-31 were rejected. Claims 14, 28, and 29 have been amended to further define various features of Applicants' invention. Claims 1-13 have been cancelled without prejudice or disclaimer. Applicants respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 102

Claims 14-15, 19-21, 23, 25 and 28-29 were rejected by the Examiner under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application Publication No. 2002/0057663 by Byung Keun Lim ("*Lim*"). Applicants respectfully traverse and submit the cited art does not teach all of the elements of the claimed embodiment of the invention.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "the identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co. Ltd.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Applicants respectfully submit that the cited art as anticipated by the Examiner cannot anticipate the rejected Claims, because the cited art does not show all the elements of the present Claims.

Applicant submits a new set of claims replacing, without prejudice, the current set of claims. The independent claim 1 now clarifies that the method comprises announcing a form of the user data messages by transmission of planning information before transmission of the user data messages, wherein the planning information comprises the form of the user data messages and the form of the user data messages to be transmitted includes at least one of a data type of the user data messages and a coding of the user data messages. Hereby a limitation of the independent claim 1 is that a transmission of planning information (comprising information about the form of the user data message) must be made before a transmission of the user data message itself. Basis for this amendment can be found

throughout the whole application as filed, especially, paragraph [0010]. Thus, no new matter has been added. A marked-up version of the new set of claims is enclosed, from which the Examiner may take the individual amendments made.

Lim fails to disclose, at least, a method comprising announcing a form of user data messages by transmission of planning information before transmission of the user data messages. Further, *Lim* fails to disclose that the planning information comprises the form of the user data messages and the form of the user data messages to be transmitted includes at least one of a data type of the user data messages and a coding of the user data messages. This is naturally so because *Lim* is a good example of background art where headers are sent together with the data packets.

The Examiner considers that *Lim* discloses sending header information before data. Office action, page 1, lines 13-14. Applicants respectfully disagree. In *Lim* the header information is **within** the multicast or broadcast message. *Lim*, section [0021], last three lines. The packet data is the multicast or broadcast message. *Lim*, section [0023], lines 3-4. The header information is within the data packet. *Lim*, section [0022], last two lines. This is explained in even more detail with reference to Figure 4. A link header (LHD) is added to the multicast or broadcast packet data. *Lim*, section [0039], lines 9-10. To this a Mux header is added and the resulting multicast or broadcast packet data is sent to every MS (mobile station). *Lim*, section [0040]. *Lim* fails to disclose sending header information before data packets, because *Lim* discloses that the headers are sent together with the multicast or broadcast packet data to the MS. Technically, the headers of the multicast or broadcast packet data in *Lim* must be sent together with the multicast or broadcast packet data, because otherwise the multicast or broadcast packet data could not be transmitted. More important, claim 1 of the present invention requires that a transmission of planning information is made **before** the transmission of user data messages. The above makes clear that in *Lim* the headers are sent **together with the transmission** of the multicast or broadcast message and **not before** the transmission of the multicast or broadcast message.

This is naturally so because the main object in *Lim* is to reduce the load burden between BTS-BSC/PCF-PDSN rather than the load burden between BTS-MS. *Lim*, section [0017], lines 3-5. This is explained in more detail with reference to Figure 3 and sections

[0034]-[0037]. Here multicast data is sent from the PDSN (via the BSC/PCF) to the BTS. *Lim*, section [0034], lines 3-5. The BTS transmit the received data (the multicast data) to every MS (mobile station). *Lim*, section [0035], line 1. If an error in the transmission occurs the BTS re-transmits the erroneous data. *Lim*, section [0036]. Hereby the load burden on the wired resources (BTS-BSC/PCF-PDSN) is reduced. *Lim*, section [0037].

It is noted that the Examiner argues that the header information of *Lim* announces the "types of the arriving packets". In this respect, the examiner refers to paragraphs [0021] and [0022] in *Lim*. However, in the cited passages of these paragraphs it is only disclosed that it is determined, based on header information within the packet data, whether the subscriber is an intended recipient of the packet data. Moreover, this is achieved with a header which comprises a **multicast group identifier**. *Lim*, paragraphs [0048] and [0054]. The data are only received by those subscribers which have subscribed to the identified multicast group. *Lim*, paragraphs [0051] and [0058]. Such a multicast group identifier is **neither** a "data type" **nor** a "coding" of the packet data. With a multicast group identifier a subscriber's device can make a decision whether the subscriber is an intended recipient. However, it is **not possible** for a subscriber device to make, with a multicast group identifier, a decision whether it is capable of processing the user data message. This is made possible with a planning information which includes at least one of a data type and a coding of the user data messages.

The rejection under 35 U.S.C. §102 is respectfully traversed because of the clarified amended set of claims filed. Since *Liam* fails to disclose, at least, a method comprising announcing a form of user data messages by transmission of planning information before transmission of the user data messages, wherein the planning information comprises the form of the user data messages and the form of the user data messages to be transmitted includes at least one of a data type of the user data messages and a coding of the user data messages, it is respectfully requested that the rejection under 35 U.S.C. §102 is withdrawn. Applicants respectfully submit that the dependent Claims are allowable at least to the extent of the independent Claim to which they refer, respectively. Thus, Applicants respectfully request reconsideration and allowance of the dependent Claims. Applicants reserve the right to make further arguments regarding the Examiner's rejections under 35 U.S.C. §102, if necessary.

Rejections under 35 U.S.C. §103

Claims 16-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Lim* in view of U.S. Patent No. 6,771,639 issued to Mark J. Holden (“*Holden*”).

Claims 22, 24 and 26-27 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Lim* in view of well-known prior art.

Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

In order to establish a prima facie case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references, however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int’l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Rather, the Examiner must identify an apparent reason to combine the known elements in the fashion claimed. *Id.* “Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on ex post reasoning. *KSR*, 127 S.Ct. at 1742. In addition, evidence that such a combination was uniquely challenging or difficult tends to show that a claim was not obvious. *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. and Mattel, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), citing *KSR*, 127 S.Ct. at 1741.

The rejection under 35 U.S.C. §103(a) is respectfully traversed because of the clarified amended set of claims filed. As explained above, *Lim* fails to teach or suggest, at least, a method comprising announcing a form of user data messages by transmission of planning information before transmission of the user data messages, wherein the planning information comprises the form of the user data messages and the form of the user data messages to be transmitted includes at least one of a data type of the user data messages and a coding of the user data messages.

Holden deals with fixed line networks where the availability of network resources and the power consumption of fixed terminals are not an issue. Thus *Holden* lies within another technical field and does not expressly deal with radio communication systems and subscriber devices of the radio communication system. Since *Holden* is silent about multicast and/or broadcast services, one having ordinary skill in the art would not be motivated to apply the teachings of *Holden* with the disclosure of *Lim*.

The subject matter as a whole would not have been obvious when combining *Lim* and *Holden*, and it is respectfully requested that the rejection under 35 U.S.C. §103(a) is withdrawn. Applicants respectfully submit that the dependent Claims are allowable at least to the extent of the independent Claim to which they refer, respectively. Thus, Applicants respectfully request reconsideration and allowance of the dependent Claims. Applicants reserve the right to make further arguments regarding the Examiner's rejections under 35 U.S.C. §103(a), if necessary, and do not concede that the Examiner's proposed combinations are proper.

CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants believe there are no fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2545.

Respectfully submitted,
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A handwritten signature in black ink, appearing to read 'A. Grubert', with a stylized flourish at the end.

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